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14 CORINTHIAN COLLEGES INC., DAVID MOORE,

15 JACK D. MASSIMINO

11 U.S. DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION

14 UNITED STATES OF AMERICA,
15 EX REL. NYOKA LEE and
16 TALALA MSHUJA,

17 Plaintiff,

18 vs.

19 CORINTHIAN COLLEGES INC., et
20 al.

21 Defendants.

CASE NO. CV 07-01984 PSG (MANx)

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANTS
CORINTHIAN COLLEGES INC.,
DAVID MOORE, AND JACK D.
MASSIMINO'S MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT; DECLARATION OF
BLANCA F. YOUNG IN SUPPORT
THEREOF**

Date: April 2, 2012

Time: 1:30 p.m.

Place: Courtroom 880

Judge: Hon. Philip S. Gutierrez

1 Pursuant to Federal Rule of Evidence 201, Defendants Corinthian Colleges,
2 Inc., David Moore, and Jack D. Massimino hereby request that the Court take
3 judicial notice of the following exhibit in support of their concurrently filed Motion
4 to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b). Rule
5 201 provides that a court may take judicial notice of facts that are “not subject to
6 reasonable dispute” in that they are either (1) “generally known within the
7 territorial jurisdiction of the trial court,” or (2) “capable of accurate and ready
8 determination by resort to sources whose accuracy cannot reasonably be
9 questioned.” Fed. R. Evid. 201(b). Additionally, a court may take judicial notice
10 of “matters of public record.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th
11 Cir. 2001).

12 **Exhibit A** – Exhibit A is a true and correct copy of an April 3, 1996 letter
13 from the U.S. Department of Education providing interpretive guidance on whether
14 two proposed payment plans were consistent with the Higher Education Act.
15 Under the cover letter attached as Exhibit B hereto, the document was produced to
16 Defendants’ counsel pursuant to a Freedom of Information Act request. Exhibit A
17 appears on Department of Education letterhead with the signature of then-Deputy
18 Director Brian Kerrigan. Accordingly, the existence of the letter and its contents
19 are “not subject to reasonable dispute” because they are “capable of accurate and
20 ready determination by resort to sources whose accuracy cannot reasonably be
21 questioned.”

22 Furthermore, the letter is a matter of public record. Courts regularly take
23 judicial notice of such “documents that are administered by or publicly filed with
24 [an] administrative agency.” *Tovar v. Midland Credit Management*, 2011 WL
25 1431988, at *2 (S.D. Cal. Apr. 13, 2011) (taking judicial notice of Department of
26 Education comments on proposed changes to FCC regulations, and letters received
27 by the FCC); *see also N.W. Envtl. Advocates v. EPA*, 537 F.3d 1006, 1026-27 (9th
28 Cir. 2008) (taking judicial notice of contents of EPA’s request for public comment);

1 *Louis v. McCormick & Schmick Restaurant Corp.*, 460 F. Supp. 2d 1153, 1155 n.4
2 (C.D. Cal. 2006) (taking judicial notice of various opinion letters from federal and
3 state regulatory agencies regarding the legality of a proposed tip-pooling
4 arrangement). Accordingly, Exhibit A is properly subject to judicial notice.
5

6 DATED: January 20, 2012

MUNGER, TOLLES & OLSON LLP

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8 By: /s/ Blanca F. Young
9 BLANCA F. YOUNG

10 Attorneys for Defendants
11 CORINTHIAN COLLEGES INC.,
12 DAVID MOORE, JACK D.
13 MASSIMINO
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DECLARATION OF BLANCA F. YOUNG

I, Blanca F. Young, state and declare as follows:

1. I am a partner with the law firm of Munger, Tolles & Olson LLP and am counsel of record for Defendants Corinthian Colleges Inc., David Moore, and Jack D. Massimino. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.

2. The document attached to this Request for Judicial Notice as Exhibit A is a true and correct copy of an April 3, 1996 letter from the U.S. Department of Education ("DOE") produced to my firm by DOE in response to a Freedom of Information Act ("FOIA") request.

3. The FOIA request was prepared at my direction and with my oversight, and I personally reviewed the documents produced by DOE in response to that request. The document attached to this Request for Judicial Notice as Exhibit B is a true and correct copy of a cover letter my firm received on or around February 26, 2009 responding to our FOIA request and enclosing the production that included the April 3, 1996 letter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 19th day of January 2012 at San Francisco, California.


Blanca F. Young